

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DWAYNE WHYTE,

Plaintiff,

-against-

COMMONWEALTH FINANCIAL
SYSTEMS,

Defendant.

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MEMORANDUM AND ORDER

14-CV-07029 (FB) (RML)

Appearances:

For the Plaintiff:

EDWARD B. GELLER, ESQ.

15 Landing Way

Bronx, NY 10464

BLOCK, Senior District Judge:

On March 3, 2016, Magistrate Judge Levy issued a Report and Recommendation (“R&R”) recommending that default judgment be entered against defendant Commonwealth Financial Systems (“Commonwealth”) in the amount of \$3,075.00, consisting of \$500.00 in statutory damages, \$2,125.00 in attorney’s fees, and \$450 in costs. *See* R&R at 12. The R&R provided that failure to object within fourteen days of receipt would preclude appellate review. *See id.* at 14. A copy of the R&R was mailed to Commonwealth on March 3, 2016. To date, no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there

are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure to timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000)

Magistrate Levy’s R&R contains no error, let alone plain error. The magistrate thoroughly considered the legal issue of whether the placement of a QR code on the outside of an envelope was an impermissible use of a symbol in violation of the FDCPA, and properly cited the legislative history and case law to support that proposition. *See Berry v. ARS Nat’l Servs., Inc.*, No 15 CV 1529, 2015 WL 9315993, at *3 (E.D.Pa. 2015). Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to enter judgment against defendant Commonwealth in favor of plaintiff in the amount of \$3,075.00.

SO ORDERED.

/s/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
June 24, 2016